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Approved For Release 2002/05/07 : CIA-RDP83-01004R000100210005-6

21 DEC 1976

MEMORANDUM FOR: Deputy Director for Administration

FROM : Thomas B. Yale
Director of Finance

VIA : Director of Personnel

SUBJECT : Policy for Not Granting Compensatory Time Off in Lieu
of Payment for Overtime - FLSA Nonexempt Employees

REFERENCES : (a) [] dtd 1 May 74
(b) FPM Letter No. 551-6, 12 June 75

1. Action Requested:

It is requested that you approve the recommendation contained in paragraph 3 that the Agency continue the policy of not granting to FLSA nonexempt employees compensatory time in lieu of payment for overtime work.

2. Background:

a. When the overtime provisions of the Fair Labor Standards Act (FLSA) were implemented in the Agency in May 1974 it was determined that nonexempt employees must be paid for all of their overtime work and could not be granted compensatory time off in lieu of overtime payment. This decision which was announced in referent (a) was compatible with the Civil Service Commission instructions issued to Federal agencies following the enactment of the Fair Labor Standards Amendments of 1974. In the FLSA instructions issued then, the CSC stated compensatory time off for overtime work "probably is not appropriate for nonexempt employees and the issue will require further study."

b. Reference (b) issued by the Commission in June 1975, contains instructions that permit Federal agencies, under limited circumstances, to grant nonexempt employees compensatory time off in lieu of pay for overtime provided the overtime is not earned under FLSA. The CSC instructions have been reviewed in the context of Agency circumstances and it is our opinion that the Agency should continue the policy of not granting to nonexempt employees compensatory time in lieu of pay for overtime work earned under

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U.S.C. Title 5, Section 5542, [] as well as under FLSA. The CSC instructions in this regard are permissive and Title 5 gives the Head of an Agency the authority to determine whether overtime worked will be compensated for by pay or time off.

c. The complex nature of the limited conditions associated with the permissive granting of compensatory time to nonexempt employees precludes administration of such claims under our payroll system as presently designed. For example, the following conditions apply to granting a nonexempt employee credit for compensatory time to be used in a workweek subsequent to that in which the overtime was worked: the employee must submit in advance a written request for credit for compensatory time off in lieu of pay; the request must be approved and the employee must be notified of the approval; the compensatory time credited must be used before a specified cutoff date and if not so used it must be converted to pay and, at any time before the cutoff date, the employee is entitled to have the compensatory time converted to pay. Modification of our payroll system to facilitate administration would not be justified because a review of the circumstances under which a Title 5 claim would be warranted for a nonexempt employee shows the prescribed mix of factors required to qualify a nonexempt employee for a grant of compensatory time off in lieu of overtime would occur very infrequently. Hence, the system modification and procedural changes required to administer the permissive system would be excessively expensive in relation to the limited benefits that might be realized by a relatively small number of employees.

3. Recommendation

It is recommended that you approve for continuing application the present Agency policy that FLSA nonexempt employees must be paid for overtime worked for which they are eligible under either FLSA or Agency regulations for Title 5 and may not be granted compensatory time in lieu of such payments.

(signed) Thomas B. Yale

Thomas B. Yale

Concur: _____

Director of Personnel

Approved: _____

Deputy Director for Administration

Disapproved: _____

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Lieu of Payment for Overtime - FLSA Nonexempt
Employees
STATINTL REFERENCE : A. [] dtd 1 May 1974
B. FPM Letter No. 551-6, 12 June 1975

1. Action Requested:

It is requested that you approve the recommendation contained in paragraph 3 that the Agency continue the policy of not granting to ^{FLSA} nonexempt employees compensatory time in lieu of payment for overtime work.

2. Basic Data

- a. When the Agency adopted in May 1974 the overtime provision of the Fair Labor Standards Act (FLSA) it made a decision that nonexempt employees must be paid for overtime work and should be granted compensatory time off in lieu of overtime payment. This decision, which was announced by referent (a), was compatible with the Civil Service Commission instructions issued to Federal agencies ^{immediately} following enactment of the Fair Labor Standards Amendments of 1974. In the FLSA instructions issued by it, CSC stated compensatory time off for overtime work "probably is not appropriate for nonexempt employees and the issue will require further study."

b. Referent (b), issued by the Commission in June 1975, contains instructions that permit Federal agencies, under limited circumstances, to grant nonexempt employees compensatory time off in lieu of pay for overtime provided the overtime is not earned under FLSA. We have reviewed the instructions contained in referent (b) and have determined that the Agency should continue the policy of not granting to nonexempt employees compensatory time in lieu of pay for overtime work. Our determination is based on: (a) the applicable CSC instructions are permissive rather than mandatory; (b) the prescribed mix of factors required to qualify a nonexempt employee for a grant of compensatory time off in lieu of overtime pay would occur infrequently and (c) the complex conditions associated with the granting of such compensatory time mitigate against the proper administration of it.

3. Recommendation

It is recommended that you affirm for continuing application the present Agency policy that FLSA nonexempt employees must be paid for overtime work and may not be granted compensatory time off in lieu of such payments.

Thomas B. Yale

Concur:

Approved:

Director of Personnel

Deputy Director for Administration

STATINTL

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